On December 9, 2004, the Ohio General Assembly passed Senate Bill 80. The bill was a comprehensive tort reform bill that was signed by Governor Taft on January 7, 2005. This legislation includes provisions, among others, to: 1) make changes to the award of certain damages; 2) establish a statute of repose for certain product liability claims; 3) provide a statutory framework for the elimination of common law product liability causes of action; and 4) provide qualified immunity from civil damages for food manufacturers, sellers, and trade associations for claims resulting from a person’s obesity. The new law is lengthy and contains many provisions. The following information is a summary of some of the key provisions of the legislation.

Noneconomic Damages

The tort reform law limits the amount of noneconomic damages that may be recovered for noncatastrophic injuries to the greater of $250,000.00 or three times the amount of the economic loss, up to a total of $350,000.00 per plaintiff or $500,000.00 per occurrence, except under the following circumstances of catastrophic injury:

1. permanent and substantial physical deformity, loss of use of a limb, or loss of a bodily organ system, or
2. permanent physical functional injury that prevents the injured person from ever being able to independently care for themselves and perform life-sustaining activities.

It also prohibits the trier of fact from considering certain evidence in deciding the amount of noneconomic damages to award, including evidence of the defendant’s wealth or financial resources. Furthermore, this legislation provides for post-judgment review utilizing a *de novo* appellate standard when awards for noneconomic loss are challenged as being excessive.

Punitive Damages

The new law provides that when punitive damages are sought, a party, upon request, is entitled to a bifurcated trial: the first to determine fault, and the other to determine awards. It expressly prohibits prejudgment interest on punitive damages and eliminates “oppression” and “insult” as a basis for an award of punitive damages.

The amount of punitive damages recoverable from large employers is limited to two times the amount of compensatory damages. The law defines a “small employer” as one who employs no more than 100 employees on a full-time permanent basis, or if in the manufacturing sector, one who employs no more than 500 employees on a full-time permanent basis. The amount of punitive damages recoverable from small employers or individuals is limited to the lesser of two times the compensatory damages, 10% of the employer’s, or individual’s net worth, or $350,000.00.

Specifically, the law exempts medical device manufacturers with previously exempted pharmaceutical drug manufacturers from punitive damage liability, regardless of the company’s size, if the device or drug was manufactured and labeled in relevant and material respects in accordance with the terms of an approval or license issued by the FDA.

Statute of Repose

The legislation establishes a 10 year statute of repose for product liability claims against manufacturers or suppliers of products. This means that claims for product liability must be asserted...
within 10 years from the date when the product was delivered to its first purchaser. However, this statute of
repose does not apply if the manufacturer or supplier engaged in fraud when giving information about the
product if that fraud contributed to the harm alleged in the product liability claim. Additionally, it does not
bar a wrongful death action involving a claim against a manufacturer or supplier who made an express
written warranty as to the safety of the product, when the warranty was for a period longer than 10 years
and the warranty was still in effect at the time of the decedent’s death.

In addition, the new law provides that the statute of repose will be applied in a remedial manner in
any civil action commenced on or after the effective date of the legislation, but it will not be applied to any
civil action pending prior to the date of enactment.

Elimination of Common Law Product Liability Causes of Action and Consumer Expectation Test as
Stand-Alone for Design Defect Causes of Action

The legislation eliminates all common law product liability causes of action. This supersedes the
holding of the Ohio Supreme Court in Carrel v. Allied Products Corporation (1997) 78 Ohio St. 3d 284. It also
eliminates the consumer expectation test as a stand-alone test for design defect claims and integrates the
consumer expectation test into the list of several factors in the risk-utility analysis for determining if a
design is defective. It strengthens the statutory exception from defect where there is no feasible alternative
design by eliminating the exception for when “the manufacturer acted unreasonably in introducing the
product.”

Obesity

The reform law provides immunity from civil damages to food manufacturers, sellers, suppliers of
qualified products, and trade associations for claims resulting from a person’s obesity, weight gain, or any
health condition related to obesity, weight gain, or cumulative consumption. However, this immunity does
not apply to claims stemming from the misbranding of the qualified product, any knowing or willful violation
of state or federal law that applies to the qualified product or any breach of an express contract or warranty
in connection with the purchase of the qualified product.

Moreover, the prevailing party on a motion to dismiss such a claim may recover reasonable attorney’s
fees and costs incurred in connection with the motion to dismiss.

Miscellaneous Provisions

• Permits jury instructions regarding the tax implications of compensatory and punitive damages awards.

• Permits defendants to introduce certain evidence of benefits that have been paid to the plaintiff in
connection with damages resulting from the injury or loss that is the subject of the litigation, except if
the source of the collateral benefits has a mandatory self-effectuating federal right, contractual right or
statutory right of subrogation or if the source is from a life insurance or disability payment.